MAY 2018

THE SUBJECT MATTER OF BILL C-45:

AN ACT RESPECTING CANNABIS AND TO AMEND THE CONTROLLED DRUGS AND SUBSTANCES ACT, THE CRIMINAL CODE AND OTHER ACTS, INSOFAR AS IT RELATES TO CANADA'S INTERNATIONAL OBLIGATIONS

Report of the Standing Senate Committee
on Foreign Affairs and International Trade

The Honourable Senator A. Raynell Andreychuk, *Chair*
The Honourable Senator Anne C. Cools, *Deputy Chair*

SENATE | SÉNAT
CANADA

For more information please contact us:
by email: AEFA@sen.parl.gc.ca
by mail: The Standing Senate Committee on Foreign Affairs
and International Trade
Senate, Ottawa, Ontario, Canada, K1A 0A4
This report can be downloaded at: www.senate-senat.ca/
The Senate is on Twitter: @SenateCA,
follow the committee using the hashtag #AEFA

Ce rapport est également offert en français.

SENATE | SÉNAT
CANADA

TABLE OF CONTENTS

THE COMMITTEE MEMBERSHIP 4
ORDER OF REFERENCE 5
SCOPE OF THE COMMITTEE'S EXAMINATION 7
CANADA'S INTERNATIONAL OBLIGATIONS 8
A. International Drug Control Conventions 8
Description 8
Witness Testimony about Compliance 9
Witness Testimony about Possible Options for Canada 11
Witness Perspectives about International Drug Control 14
Witness Testimony about Potential Consequences for Canada 16
B. United Nations Convention on the Rights of the Child 18
C. United Nations Declaration on the Rights of Indigenous Peoples 19
IMPORT AND EXPORT OF CANNABIS 20
RELATIONS WITH THE UNITED STATES 21
OBSERVATIONS AND RECOMMENDATIONS 22
WITNESSES 23

THE COMMITTEE MEMBERSHIP

The Honourable A. Raynell Andreychuk, *Chair*
The Honourable Anne C. Cools, *Deputy Chair*

The Honourable Senators

Salma Ataullahjan
Patricia Bovey
Jane Cordy
Dennis Dawson
Stephen Greene
Leo Housakos
Paul Massicotte
Thanh Hai Ngo
Victor Oh
Raymonde Saint-Germain

Ex-officio members of the committee:

The Honourable Senator Peter Harder, P.C. (or Diane Bellemare) (or Grant Mitchell); Larry Smith (or Yonah Martin); Joseph Day (or Terry Mercer); Yuen Pau Woo (or Raymonde Saint-Germain)

Other Senators who have participated in the study:

The Honourable Senators Cormier, Lankin, MacDonald and Tannas

Parliamentary Information and Research Services, Library of Parliament:

Nadia Faucher and Natalie Mychajlyszyn, Analysts

Senate Committees Directorate:

Marie-Ève Belzile, Clerk of the Committee
Stéphanie Pépin, Administrative Assistant

Senate Communications Directorate:

Mila Pavlovic, Communications Officer (Committees)

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Thursday, February 15, 2018:

The Honourable Senator Harder, P.C., moved, seconded by the Honourable Senator Bellemare:

That, notwithstanding any provisions of the Rules, usual practice or previous order, in relation to Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts:

1. without affecting the progress of any proceedings relating to Bill C-45:

    1.1. the Standing Senate Committee on Legal and Constitutional Affairs be authorized to study the subject matter of those elements contained in Parts 1, 2, 8, 9 and 14 of the bill;

    1.2. the Standing Senate Committee on Aboriginal Peoples be authorized to study the subject matter of the bill insofar as it relates to the Indigenous peoples of Canada; and

    1.3. each of the above committees submit its report to the Senate pursuant to this order no later than April 19, 2018; and

2. if Bill C-45 is read a second time, it be referred to the Standing Senate Committee on Social Affairs, Science and Technology, in which case that committee be authorized to take any reports tabled under point 1 of this order into consideration during its study of the bill.

With leave of the Senate and pursuant to rule 5-10(1), the motion was modified to read as follows:

That, notwithstanding any provisions of the Rules, usual practice or previous order, in relation to Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts:

1. without affecting the progress of any proceedings relating to Bill C-45:

    1.1. the Standing Senate Committee on Legal and Constitutional Affairs be authorized to study the subject matter of those elements contained in Parts 1, 2, 8, 9 and 14 of the bill;

1.2. the Standing Senate Committee on Aboriginal Peoples be authorized to study the subject matter of the bill insofar as it relates to the Indigenous peoples of Canada;

1.3. the Standing Senate Committee on Foreign Affairs and International Trade be authorized to study the subject matter of the bill insofar as it relates to the Canada's international obligations;

1.4. the Standing Senate Committee on National Security and Defence be authorized to study the subject matter of the bill insofar as it related to Canada's borders; and

1.5. each of the above committees submit its report to the Senate pursuant to this order no later than May 1, 2018; and

2. if Bill C-45 is read a second time, it be referred to the Standing Senate Committee on Social Affairs, Science and Technology, in which case that committee be authorized to take any reports tabled under point 1 of this order into consideration during its study of the bill.

The question being put on the motion, as modified, it was adopted.

Richard Denis
Clerk of the Senate

Extract from the *Journals of the Senate*, Thursday, April 26, 2018:

The Honourable Senator Harder, P.C., moved, seconded by the Honourable Senator Mitchell:

That, notwithstanding the order of the Senate adopted on February 15, 2018, the date for the submission of the report of the Standing Senate Committee on Foreign Affairs and International Trade relating to its study of the subject matter of Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, insofar as it relates to the Canada's international obligations, be extended from May 1, 2018 to May 9, 2018.

The question being put on the motion, it was adopted.

Richard Denis
Clerk of the Senate

Your Committee, which was authorized to study the subject matter of Bill C-45, An Act Respecting Cannabis and to Amend the Controlled Drugs and Substances Act, the Criminal Code and Other Acts, as it relates to Canada's international obligations, has examined the said subject matter and now reports as follows:

SCOPE OF THE COMMITTEE'S EXAMINATION

The Standing Senate Committee on Foreign Affairs and International Trade (your Committee) held meetings on March 21, 22, 28 and 29; on April 18, 19 and 25; and also on May 1 2018. It heard from the Minister of Foreign Affairs, officials from Global Affairs Canada (GAC), Health Canada and the Canada Border Services Agency (CBSA), several international legal scholars and analysts, as well as representatives of non-governmental organizations (NGOs). It also received written briefs from the International Narcotics Control Board (INCB), UNICEF Canada, and the Canadian Bar Association. Other representatives of various stakeholder communities were invited but did not participate.

The evidence and written briefs received drew your Committee's attention to the potential international legal and political implications of the legalization of cannabis in Canada and the scale of their impact. In particular, most witnesses focused on Canada's obligations under three international drug control conventions: the *1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol* (1961 Single Convention), the *1971 Convention on Psychotropic Substances* and the *1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988 Anti-Trafficking Convention). Other witnesses addressed the legalization of cannabis from the perspective of Canada's commitments under the 1990 *United Nations Convention on the Rights of the Child* (CRC) and the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). Your Committee also heard testimony about the potential implications of Bill C-45 for international financial transactions, Canada's international commercial agreements, education cooperation and exchanges, as well as Canadians travelling abroad. In addition, witnesses testified about matters relating to the intersection of international human rights laws and drug control efforts as well as how data on cannabis use is collected and informs public policy development.

CANADA'S INTERNATIONAL OBLIGATIONS

A. International Drug Control Conventions

Description

1. Your Committee was told that, with over 180 signatories, the 1961 Single Convention, the 1971 Convention on Psychotropic Substances and the 1988 Anti-Trafficking Convention collectively represent a consensus in international drug control. Their centrality was reaffirmed in the outcome document of the 2016 United General Assembly's Special Session on the World Drug Problem (UNGASS), which referred to the three treaties as "the cornerstone of the international drug control system."[1]

   Your Committee heard that, according to the terms of these treaties, cannabis is among 124 narcotic or psychotropic controlled substances that are deemed to have "particularly dangerous properties," to present a serious risk of dependence and abuse, and to have limited therapeutic value.[2] Your Committee was informed that "[t]he conventions are founded upon the concern of Member States for the health and welfare of human kind" and "upon the principle of common and shared responsibility between Member States to address the world drug problem."[3]

   Accordingly, signatories to these conventions are committed to prohibiting the production, sale, distribution and possession of psychotropic and narcotic drugs, including cannabis, as well as substances used in their manufacture. They are also obliged to make it a criminal offence to possess, purchase or cultivate narcotic or psychotropic drugs (including cannabis); and to make drug offences punishable by imprisonment or other forms of deprivation of liberty, as well as by pecuniary sanctions and confiscation. Exceptions to such prohibitions are made for medical and scientific purposes. At the international level, the conventions also oblige signatories to limit the import and export of cannabis to medical and scientific purposes while also combating illicit drug trafficking. The conventions were also described to your Committee as "a vehicle for facilitating mutual legal assistance and extradition between States and for combating money-laundering."[4] Furthermore, these obligations are undertaken "together with the body of internationally agreed human rights standards and norms."[5]

---

1 United Nations Office on Drugs and Crime (UNODC), Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem, New York, 19-21 April 2016.

2 1961 Single Convention, art. 2.5(a).

3 International Narcotics Control Board (INCB), written brief submitted to the Standing Senate Committee on Foreign Affairs and International Trade (AEFA), 13 April 2018.

4 INCB written brief.

5 INCB written brief.

2. The International Narcotics Control Board (INCB) is the "independent, quasi-judicial expert body" tasked by the 1961 Single Convention, the 1971 Convention on Psychotropic Substances and the 1988 Anti-Trafficking Convention with monitoring them and promoting their implementation.[6] The board comprises 13 members whom the United Nations Economic and Social Council (ECOSOC) elects for five-year terms to serve in their "personal capacity" as impartial experts, independently of governments.[7] In monitoring and promoting treaty compliance, the INCB maintains an ongoing dialogue with governments through regular consultations and country missions to address weaknesses in drug control.[8]

Witness Testimony about Compliance

3. Witnesses appearing before your Committee all agreed that if Bill C-45 is passed, Canada would be in violation of the 1961 Single Convention, the 1971 Convention on Psychotropic Substances, and the 1988 Anti-Trafficking Convention.

4. Your Committee heard from the Minister of Foreign Affairs at the end of its hearings. In her testimony, the Minister "recognize[d] that [the] proposed approach of legalizing, [regulating], and strictly restricting cannabis will result in Canada contravening certain obligations [...] under the three UN drug conventions: the Single Convention on Narcotics Drugs from 1961, the 1971 Convention on Psychotropic Substances and the 1988 United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances."[9]

   Even as Bill C-45 will violate certain international obligations related to cannabis, the Minister of Foreign Affairs noted that Canada's policy regarding international drug control remains consistent with the overarching goal of the three conventions, namely to protect the health and welfare of society. Moreover, while GAC officials in earlier testimony characterized the contravention of the international drug conventions as technical,[10] the Minister of Foreign Affairs stated before your Committee that "the issue of the conventions is an important one, and [the government] need[s] to be clear about it."[11]

   The Minister of Foreign Affairs told your Committee that Canada will continue to work with its partners in order to uphold the international rules-based order and to protect its reputation. She stated that the Government of Canada is "open to working with treaty partners to identify solutions that accommodate different approaches to cannabis within

---

6 The INCB was established by the 1961 Single Convention. INCB, *About*.
7 Ibid.
8 INCB, *Mandate and Functions*.
9 Senate, Standing Senate Committee on Foreign Affairs and International Trade (AEFA), *Evidence*, 1 May 2018 (The Honourable Chrystia Freeland, P.C., M.P., Minister of Foreign Affairs).
10 AEFA, *Evidence*, 21 March 2018 (Global Affairs Canada).
11 AEFA, *Evidence*, 1 May 2018 (The Honourable Chrystia Freeland, P.C., M.P., Minister of Foreign Affairs).

the international framework."[12] She informed your Committee that government officials have been discussing Canada's intention to legalize recreational cannabis with G7 countries as well as a dozen others.[13] In particular, she noted that Canada was re-elected to the Commission on Narcotic Drugs (CND)[14] in a contested election in March 2017, after having announced its intention to legalize recreational cannabis.[15]

In answering questions put to her about how Canada intends to reconcile its views on the importance of a rules-based international order with Bill C-45's violation of international treaties, the Minister pointed out the need for Canada to be open about being in contravention, to preserve the health and safety of Canadians, as well as to work with international partners.

In the context of Canada–U.S. relations, the Minister underscored that, with respect to federal legislation governing the non-medical and non-scientific use of cannabis and with the passage of Bill C-45, Canadian and U.S. federal law will differ. She also informed your Committee that there is "no indication that [the] legalization of cannabis will cause the U.S. to change its approach to Canadian travellers and business people transiting the Canada-U.S. border."[16]

When asked if Canada has had a dialogue with U.S government officials with regard to how the legalization of recreational cannabis might affect Canada–U.S. border relations, the Minister of Foreign Affairs stated that the Minister of Transport and the Minister of Public Safety share direct responsibility for discussing border and transportation issues with their American counterparts. She confirmed that these two ministers along with the Minister of Health have all had such discussions at different levels. She further mentioned that, with the passage of Bill C-45, Canadians will need to be made aware that transporting cannabis across the Canada-U.S. border in any direction will remain illegal.

5. Professor Dwight Newman, University of Saskatchewan, testified, "Canada will be in breach of dozens of specific treaty commitments involved in these treaties."[17] Professor Steven Hoffman, York University, noted, "There's very little controversy around the fact that we will actually be in violation of them."[18] Professor Armand de Mestral, McGill

---

12 AEFA, *Evidence*, 1 May 2018 (The Honourable Chrystia Freeland, P.C., M.P., Minister of Foreign Affairs).

13 AEFA, *Evidence*, 1 May 2018 (The Honourable Chrystia Freeland, P.C., M.P., Minister of Foreign Affairs).

14 The CND is a body established by UN Economic and Social Council (ECOSOC) to supervise international drug control treaties. It is composed of 53 UN member states elected by ECOSOC for a four-year term and serves as the UN's central policy-making body in respect of drug control matters.

15 AEFA, *Evidence*, 1 May 2018 (The Honourable Chrystia Freeland, P.C., M.P., Minister of Foreign Affairs).

16 AEFA, *Evidence*, 1 May 2018 (The Honourable Chrystia Freeland, P.C., M.P., Minister of Foreign Affairs).

17 AEFA, *Evidence*, 29 March 2018 (Dwight Newman).

18 AEFA, *Evidence*, 22 March 2018 (Steven Hoffman).

University, remarked in comparing Bill C-45 with the international drug control framework, "Clearly, there is a problem. One is not compatible with the other."[19] For his part, Mr. Bruno Gélinas-Faucher, a PhD candidate in international law at the University of Cambridge, testified, "[T]his is not minor at all. Legalizing cannabis will lead to the violation of a fundamental principle that is at the very heart of the conventions." He cited internal documents from GAC that were obtained through an access to information request which recognized on the part of the department that the legalization of cannabis "would have a significant impact" on Canada's obligations under the international drug control conventions.[20]

6. The INCB noted in its written submission to your Committee that Bill C-45 is "incompatible with the treaty obligations to which Canada is bound."[21] The INCB underscored that it "views any legislative measures aimed at legalizing and regulating the use of controlled substances for non-medical purposes as a fundamental breach of the international treaty provisions to which State parties to the international drug control conventions are held."[22] Accordingly, "the legalization and regulation of cannabis for non-medical and non-scientific purposes, as foreseen in Bill C-45, cannot be reconciled with Canada's international obligations ... ."[23] The statement continues: "[Bill C-45] is also inconsistent with Canada's obligations ... to establish as a criminal offence the intentional possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption ... ."[24]

Witness Testimony about Possible Options for Canada

7. While emphasising that Bill C-45 implements domestic policy, GAC officials noted that it is consistent with the overall objective of the international drug control regime, where the protection of the health and welfare of humankind is concerned. Moreover, they emphasized that Bill C-45 does not take away from Canada's international commitments regarding prohibitions of other substances or combating illicit drug trafficking.[25]

GAC officials told your Committee that, "[a]t this time, Canada does not intend to take any treaty actions."[26] Your Committee heard that the Government of Canada intends to monitor and observe the legal and political reactions of the international community to Canada's new approach to regulating cannabis. The government also intends to sustain its ongoing engagement and dialogue with other countries, both globally and regionally, regarding capacity-building to combat drug abuse and illicit drug trafficking, and to

---

19 AEFA, *Evidence*, 28 March 2018 (Armand de Mestral).
20 AEFA, *Evidence*, 29 March 2018 (Bruno Gélinas-Faucher).
21 The INCB was established by the 1961 Single Convention. INCB, *About*; INCB, written brief.
22 INCB, written brief.
23 INCB, written brief.
24 INCB, written brief.
25 AEFA, *Evidence*, 21 March 2018 (Global Affairs Canada).
26 AEFA, *Evidence*, 21 March 2018 (Global Affairs Canada).

collaborate with its international partners to address the complex and multifaceted global drug threat and problematic substance use.

8. Your Committee heard from witnesses about a range of unilateral actions that Canada can take in order to mitigate the political and legal consequences of contravening the drug control treaties. Professor Hoffman, Professor de Mestral and Professor Line Beauchesne, University of Ottawa, discussed the option of Canada denouncing, or **withdrawing** from, the conventions, the lengthy timelines and advance notice involved, and even the possibility of **re-adhering under a reservation**.

   However, Professor de Mestral and Professor Beauchesne stressed that reservations are intended to have specific application within the parameters of the treaty in question, rather than to serve as a method for derogating a party's obligations.[27]

9. Mr. Gélinas-Faucher testified about the "**non-compliance principle**," whereby "a state admits to being in violation, but still remains active on the world stage."[28] Steve Rolles, Senior Policy Analyst, Transform UK, commented that:

   > [M]oving to a temporary period of technical non-compliance with certain articles of the treaties, whilst, in parallel, proactively seeking to reform and modernize the outdated and malfunctioning drug control framework, would seem to be far more respectful of the treaty system than abandoning the system altogether, propping up a failing system with compromise reforms, or hiding behind dubious legal arguments. Temporary non-compliance as a prelude to or catalyst for a process of treaty reform is a common pattern within the evolution of the international treaty system.[29]

10. Several witnesses discussed the possibility of Canada pursuing a multilateral response to its potential contravention of the drug control treaties. Accordingly, they raised the possibility of Canada engaging with like-minded countries in order to seek **amendments** to these drug conventions or the **declassification** of cannabis by the relevant international bodies. These bodies include the Commission on Narcotic Drugs and the World Health Organization's Expert Committee on Drug Dependence.[30] In this respect, only the Commission on Narcotic Drugs is empowered by the treaties to make changes, deletions or additions to the schedules of prohibited substances.[31]

---

27 AEFA, *Evidence*, 28 March 2018 (Line Beauchesne, Armand de Mestral).
28 AEFA, *Evidence*, 29 March 2018 (Bruno Gélinas-Faucher).
29 AEFA, *Evidence*, 18 April 2018 (Steve Rolles).
30 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma).
31 For the schedule of narcotics annexed to the *Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol* (1961 Single Convention), in which cannabis is listed, a simple majority of CND members present and voting is required to make modifications to the list of substances. United Nations Office on Drug and Crime (UNODC), *CND: Scheduling procedures*. UNODC, *Legal Framework for Drug Trafficking*; and UNODC, *CND*.

11. Some witnesses discussed the option of ***inter se*** modification and the role Canada could play in its pursuit. Your Committee was informed that the *inter se* option would entail the negotiation of a side agreement on cannabis among like-minded countries that are parties to the three drug control conventions.[32] It would also maintain "a clear commitment to the original treaty aim to promote the health and welfare of human kind, and to the original treaty obligations vis-à-vis countries that are not party to the *inter se* agreement."[33] This option is provided for in Article 41 of the *Vienna Convention on the Law of Treaties*.[34]

    Mr. Martin Jelsma, Director, Drugs and Democracy Programme, Transnational Institute, in particular proposed the *inter se* mechanism as one alternative by which Canada can, together with like-minded states, continue to comply with the international drug control conventions. In his testimony, he speculated that it was "designed to find a balance between the stability of treaty regimes and the necessity of change in the absence of consensus and appears to provide a useful safety valve for the state of paralysis of the global drug control regime today."[35]

    At the same time, Mr. Jelsma further explained that the procedure is not used often in international law.[36] According to Mr. Rolles, its application under the current circumstances facing Canada and the international drug control conventions is in effect "unchartered territory."[37] For her part, Professor Beauchesne testified that this measure is not optimal where the three drug control conventions are concerned as it would undermine their core objectives.[38]

12. Your Committee heard from witnesses that international law generally and the drug control regime in particular are inherently flexible and can accommodate instances of national differentiation and changing norms as exemplified in Bill C-45. GAC officials noted, a "one-size-fits-all approach is unrealistic and that states need sufficient flexibility to adjust their policies according to national circumstances and priorities."[39] Professor Hoffman stated, "The flexibilities that these three treaties provide are numerous."[40]

    On the other hand, witnesses told your Committee that, in order to maintain their integrity, the drug conventions are limited in the extent to which they can accommodate flexibility and national differentiation. Along these lines, Professor Newman remarked, "[I]t's not up to individual states to choose to follow some provisions of a treaty and not others. Canada would certainly object if its treaty

---

32 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma).
33 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma).
34 AEFA, *Evidence*, 28 March 2018 (Line Beauchesne).
35 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma).
36 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma).
37 AEFA, *Evidence*, 18 April 2018 (Steve Rolles).
38 AEFA, *Evidence*, 28 March 2018 (Line Beauchesne).
39 AEFA, *Evidence*, 21 March 2018 (Global Affairs Canada).
40 AEFA, *Evidence*, 22 March 2018 (Steven Hoffman).

partners did that in the context of their trade commitments to Canada, their open human rights commitments or anything else."[41]

13. Professor Newman also discussed the possibility of delaying passage of C-45 until the aspects of Canada's legal status vis à vis the international drug conventions are clarified and "so that Canada [doesn't] become an international treaty violator more than necessary."[42]

Witness Perspectives about International Drug Control

14. Over the course of its hearings, your Committee was told by some witnesses that global thinking about cannabis was shifting away from a criminal justice approach that is reflected in the existing international drug control regime and towards a public health approach. Professor Beauchesne described some of the drivers of this shift. They include concerns related to "the level of violence and death associated with the illegal drug market, the corruption of institutions with drug money, the obstacles that prohibition creates for global efforts to combat HIV and hepatitis C, and the vast amounts of money spent on enforcement instead of treatment and prevention."[43]

15. Several witnesses focused on the manifestation of this shift across various jurisdictions. They pointed especially to the Netherlands' de facto decriminalization of cannabis in 1976, Portugal's decriminalization in 2001, and Spain's limited decriminalization of cannabis possession in 2002, among others.

16. Your Committee heard about the experience of Bolivia. According to Mr. Jelsma, in January 2012, Bolivia withdrew from the 1961 Single Convention after failing to obtain a reservation from the criminalization provisions of the treaty for the traditional use of the coca leaf, which is protected in the Bolivian constitution. A year later, the country was able to obtain a reservation and re-acceded to the treaty.[44]

17. Some witnesses referred to recent developments in several U.S. states regarding the legalization of the medical and non-medical use of cannabis. While the possession, sale, consumption and distribution of non-medical cannabis is prohibited by U.S. federal law, ten U.S. jurisdictions have legalized the recreational use of cannabis. At the same time, 29 states have legalized its medical use. Professor Mark Kleiman, New York University, testified, "I expect the cascade to continue. I expect more and more states to legalize. Public opinion in the U.S. now is more than 60 per cent for legalization."[45]

18. Witnesses singled out Uruguay as the first and only country to have legalized non-medical use of cannabis. For its part, the INCB has repeatedly stated that Uruguay's

---

41 AEFA, *Evidence*, 29 March 2018 (Dwight Newman).
42 AEFA, *Evidence*, 29 March 2018 (Dwight Newman).
43 Line Beauchesne, written brief submitted to AEFA, 28 March 2018.
44 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma).
45 AEFA, *Evidence*, 22 March 2018 (Mark Kleiman).

legalization of non-medical cannabis contravenes the 1961 Single Convention.[46] However, in the years since its legalization in 2013, your Committee heard that, not only does Uruguay remain a signatory to the conventions, but it also has not acknowledged legalization to be in violation of its obligations.[47] Uruguay has argued that its adoption of the legislation is justified on the grounds of public health and public security, and that legalization is in line with UN treaties on human rights, development and health. Moreover, your Committee heard that no sanctions authorized by the international drug control regime have been applied against Uruguay.[48]

At the same time, Professor de Mestral and Mr. Walsh pointed to financial measures included in the U.S.'s *Patriot Act* that are affecting Uruguay.[49] By prohibiting banks, including non-American banks that have interbanking accounts in the U.S., from serving accounts linked to illegal substances such as recreational cannabis, the Act in effect has impeded access to the banking system by Uruguayan pharmacies that are dispensing non-medical cannabis. As a result, as Mr. Walsh further noted, Canadian banks will need to assess the risks associated with servicing the cannabis industry and do their due diligence.[50]

19. Notwithstanding developments in jurisdictions that have either decriminalized or legalized cannabis possession and use, Professor Beauchesne noted that several countries such as Russia, China, Pakistan and Iran favour domestic prohibition and criminalization and reject any imposition of a shift in approach. She noted in particular their influential role in key international bodies that play a role in the global management of drug control, such as the CND.[51]

20. Mutual legal assistance is a provision of the international drug control framework, notably the 1988 Anti-Trafficking Convention. Your Committee notes that Bill C-45, Article 171, which provides for amendments to the *Mutual Legal Assistance in Criminal Matters Act,* was itself amended by the House of Commons Standing Committee on Health. According to that evidence, these amendments are technical and reflect the removal of property provisions related to cannabis offences from the scope of the *Controlled Drugs and Substances Act.* Since then, your Committee heard testimony by Professor Newman about Article 171 and the possibility of additional amendments in order to "achieve better conformity" with the international drug control framework where mutual legal assistance is concerned.[52]

---

46 INCB, *Report 2017*, 1 March 2018.
47 AEFA, *Evidence*, 19 April 2018 (John Walsh).
48 AEFA, *Evidence*, 19 April 2018 (John Walsh).
49 AEFA, *Evidence*, 28 March 2018 (Armand de Mestral); AEFA, *Evidence*, 19 April 2018 (John Walsh).
50 AEFA, *Evidence*, 19 April 2018 (John Walsh).
51 AEFA, *Evidence*, 28 March 2018 (Line Beauchesne).
52 AEFA, *Evidence*, 29 March 2018 (Dwight Newman).

Witness Testimony about Potential Consequences for Canada

21. Mr. Walsh offered reassuring testimony about Canada's international reputation with the potential passage of Bill C-45. Specifically, he said:

> Canada has sound reasons for moving forward now with this cannabis law reform for the health, security and well-being of Canadians, even though doing so will inevitably entail non-compliance with certain drug treaty obligations. The drug treaty non-compliance that Canada's shift will entail has remedies in international law, and Canada's international reputation as a good global citizen need not suffer along the way.[53]

22. In contrast, some witnesses testified about potential sanctions and other responses taken by the international community that could be levied against Canada if Bill C-45 is adopted. Mr. Gélinas-Faucher described the measures set out in the UN drug control treaties that can be taken under the authority of the INCB in response to a state's non-compliance with the drug conventions.[54] These include negotiation or mediation with the state in question to promote compliance. In the case of an apparent treaty violation, the board may first request confidential consultations or explanations from the government. If necessary, the board can call for remedial measures.[55] Where a serious failure to comply with the conventions persists, the INCB may publicly call the matter to the attention of states parties, the CND and its superior body, ECOSOC.[56] ECOSOC may also bring the matter to the attention of the UN General Assembly.[57] As a final resort, the INCB may recommend an embargo on trade in drugs and medicines with the country concerned. In this respect, such a decision must be taken by a two-thirds majority of all members of the board, not just those present and voting.[58]

Mr. Jelsma noted, "I can assure you that that is not going to happen."[59] With respect to a potential embargo, both he and Mr. Walsh testified that this sanction is unlikely to be applied since the INCB has never used such a measure. Moreover, this sanction would be in conflict with one of the objectives of the treaty to provide sufficient availability of the controlled substances for medical purposes.[60]

23. Professor de Mestral pointed to Canada's experience with the 1970 *Arctic Waters Pollution Prevention Act*, which asserts the Government of Canada's jurisdiction over the navigation of international shipping through Arctic waters. He noted that the Act generated an "extremely negative" reaction on the part of the international community,

---

53 AEFA, *Evidence*, 19 April 2018 (John Walsh).
54 AEFA, *Evidence*, 29 March 2018 (Bruno Gélinas-Faucher).
55 1961 Single Convention, art. 14; and *Convention on Psychotropic Substances, 1971*, art. 19. See also INCB, *Treaty Compliance*; and INCB, *Mandate and Functions*.
56 Ibid.
57 Ibid.
58 Ibid.; UNODC, *Commentary on the Single Convention on Narcotic Drugs, 1961*, E.73.XI.1, New York, 1973, p. 197; AEFA, *Evidence*, 29 March 2018 (Bruno Gélinas-Faucher).
59 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma).
60 AEFA, *Evidence*, 19 April 2018 (Martin Jelsma, John Walsh).

including several protests from allies, as it was in apparent contravention of international law governing freedom of the seas.[61]

In drawing conclusions about this experience, Professor de Mestral noted:

> We built a consensus, the third Convention on the Law of the Sea gave us a platform where we were able to make our arguments successfully that change was needed. But clearly in the face of protests, Canada simply said, "We will not go to the international court on this issue. We believe we are right. We believe that change has to be made to international law, and we're prepared to do it with like-minded states. I guess that may be what Canada will have to do.[62]

24. Professor de Mestral underscored the importance of the basic principle of international treaty law, *pacta sunt servanda*, whereby treaties are to be obeyed and respected.[63] For his part, Professor Hoffman remarked, "[I]n today's climate, when we see different actors making different statements, … the world really needs Canada and other countries to be supporting that rules-based order."[64] He emphasized, "[W]hen reviewing this particular bill, Bill C-45, you're not just reviewing its particular provisions. In a sense, Parliament is also deciding whether international law matters and to what extent."[65] Mr. Gélinas-Faucher remarked, "There could be political consequences for Canada with respect to treaty violations."[66]

25. In addition, witnesses testified that Canada's international reputation could be affected by the adoption of Bill C-45 and Canada's subsequent contravention of the international drug conventions. Mr. Paul Larkin, Senior Legal Research Fellow, Meese Center for Legal and Judicial Studies, stated, "[T]here is a risk that the passage of Bill C-45 could adversely affect the judgment of the world community regarding the reliability of Canada as a partner to international conventions."[67] Professor Hoffman noted, "[I]f a country like Canada has a stellar reputation for being in compliance with international law, being a champion of international law, I do worry there might be consequences … ."[68] Mr. Rolles testified:

> The evolution of legal systems to account for changing circumstances is fundamental to their survival and utility, and the regulatory experiments being pursued by various states are acting as a catalyst for this process. Indeed, respect for the rule of law requires challenging those laws that are generating harm or that are ineffective. If the treaty system is unable to accommodate the growing calls to evolve or modernize from the very

---

61 AEFA, *Evidence*, 28 March 2018 (Armand de Mestral).
62 Ibid.
63 Ibid.
64 AEFA, *Evidence*, 22 March 2018 (Steven Hoffman).
65 Ibid.
66 AEFA, *Evidence*, 29 March 2018 (Bruno Gélinas-Faucher).
67 AEFA, *Evidence*, 18 April 2018 (Paul Larkin).
68 AEFA, *Evidence*, 22 March 2018 (Steven Hoffman).

member states it serves, it faces a slow drift into irrelevance as more and more countries defect from its failed prohibitionist tenets.[69]

B. United Nations Convention on the Rights of the Child

26. Your Committee also heard concerns about Bill C-45 from the perspective of Canada's commitments under the 1990 United Nations *Convention on the Rights of the Child* (CRC). These commitments include freedom from discrimination, consideration of the best interests of children, the right to develop one's full potential, the right to a healthy environment, the right to protection from illicit drugs and the drug trade, and the right to rehabilitative and restorative justice. In addition, Canada is obligated to provide specific protections and provisions for vulnerable populations such as Aboriginal children.

27. For her part, Kathy Vandergrift, Chair, Canadian Coalition for the Rights of the Child, told your Committee that Bill C-45 generally favours and protects Canadian children. However, in terms of specific concerns, she noted that the threshold for triggering criminal sanctions for adults is possession of 30 grams. When compared to the threshold of 5 grams for Canadian youth between the ages of 12 and 17, she testified that Bill C-45 would put Canada in violation of the CRC by discriminating against Canadian youth.[70]

28. In its written brief, UNICEF Canada clarified the source of data in UNICEF's Report Card 11, *Child Well-Being in Rich Countries: A Comparative Overview*. In particular, the 2013 report refers to Canadian youth as having the highest rate of cannabis use among 29 developed countries from Europe and North America. Your Committee heard that the World Health Organization leads a global Health Behaviour in School-Aged Child Survey (HBSC) to which Canadian researchers contribute with data collected from a survey administered in Canada. It is this data from the HBSC survey that informs UNICEF's Report Card.[71]

29. Mrs. Gwendolyn Landolt, National Vice-President, REAL Women of Canada, testified that Bill C-45, in not criminalizing youth between the ages of 12 and 17 to possess, distribute or share up to 5 grams of cannabis, "is completely in contravention of [Article 33 of] the UN *Convention on the Rights of the Child*."[72] Mr. Grant Wilson, President, Canadian Children's Rights Council, remarked, "The United Nations *Convention of the Rights of the Child* dictates that because the Government of Canada is ultimately the guardian of all Canadian children, they should analyse, explain and monitor specific goals regarding laws which impact children."[73]

---

69 AEFA, *Evidence*, 18 April 2018 (Steve Rolles).
70 AEFA, *Evidence*, 29 March 2018 (Kathy Vandergrift).
71 UNICEF Canada, written brief submitted to AEFA, April 2018.
72 AEFA, *Evidence*, 19 April 2018 (Gwendolyn Landolt).
73 AEFA, *Evidence*, 18 April 2018 (Grant Wilson).

C. United Nations Declaration on the Rights of Indigenous Peoples

30. The study of Bill C-45 insofar as it relates to the Indigenous peoples of Canada was referred to the Standing Senate Committee on Aboriginal Peoples. However, as part of its examination of the bill as it relates to Canada's international obligations, your Committee heard testimony about its potential implications for Canada's policy commitment to implement the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). The Declaration, which Canada adopted in 2016, outlines among other items the rights of Indigenous peoples on issues such as culture, identity, health and community. It defines the duty of states to "consult and cooperate in good faith with the indigenous peoples [*sic*] concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."[74] In his testimony, Professor Newman drew your Committee's attention to UNDRIP and the importance of it being taken into account in the context of Canada's international obligations. In particular, he raised concerns about the extent to which this duty to consult was implemented in a meaningful way if at all in the context of Bill C-45.[75]

---

74 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples.*

75 AEFA, *Evidence*, 29 March 2018 (Dwight Newman); Dwight Newman, written brief submitted to AEFA, 22 March 2018.

IMPORT AND EXPORT OF CANNABIS

31. Your Committee heard that Bill C-45 does not introduce changes to the importation or exportation of cannabis. The import and export of cannabis for medical and scientific purposes are allowed under the drug conventions.[76] The *Access to Cannabis for Medical Purposes Regulations* currently permits Health Canada to authorize the import and export of cannabis for medical and scientific purposes. Officials from Health Canada confirmed that Bill C-45 proposes to maintain the same rules. They further confirmed that "any and all movement of cannabis must take place within the confines of [Canada's] international obligations and the laws of other countries" and that the "unauthorized international cross-border movement of cannabis will remain a serious criminal offence under Bill C-45."[77]

    Health Canada will continue to be responsible to deliver import and export permits for medical cannabis under very limited circumstances and consistent with Canada's international obligations. The export and import permits specify the mode of transportation and quantity; they are issued only for one-time transaction. Health Canada officials testified that a central factor in the decision to grant a licence is ensuring that the import or export transaction respects the scientific or medical purpose of the cannabis.[78]

32. GAC officials affirmed that if Bill C-45 is passed, Canada will not be derogating any of its international trade obligations under the current terms of the North American Free Trade Agreement (NAFTA), the Canada–European Union Comprehensive Economic and Trade Agreement (CETA), nor as a member of the World Trade Organization.[79]

33. In its written submission, the Canadian Bar Association recommended "clarifying the eligibility and requirements to obtain a licence [...] for the import and export of cannabis for medical purposes." It also recommended that "the legislator is advised to ensure consistency with Canada's international law obligations regarding trade and investment insofar as it may be relevant to the legalization of medicinal and recreational cannabis."[80]

---

76 INCB written brief.
77 AEFA, *Evidence,* 25 April 2018 (Health Canada).
78 AEFA, *Evidence,* 25 April 2018 (Health Canada).
79 AEFA, *Evidence*, 21 March 2018 (Global Affairs Canada)
80 Canadian Bar Association, written brief submitted to AEFA, 21 March 2018.

RELATIONS WITH THE UNITED STATES

34. Your Committee also heard testimony about Bill C-45 in the context of relations between Canada and the United States. Specifically, witnesses testified about various matters related to cross-border issues. Canada Border Services Agency (CBSA) officials pointed out to your Committee that U.S. federal law continues to prohibit the possession, sale, consumption and distribution of non-medical cannabis.[81]

35. CBSA and GAC officials testified that the passage of Bill C-45 will not change the relationship they have with their American counterparts.[82] In particular, CBSA officials confirmed that it has been meeting with officials at the U.S. Customs and Border Protection Agency to discuss cross-border issues and Bill C-45. At these meetings, U.S. officials noted that the current policy relating to travellers entering the U.S. will remain unchanged. As stated by CBSA officials, "the United States has the authority to declare someone inadmissible for cannabis use as well as other crimes related to cannabis."[83] Your Committee also heard that "right now [cannabis use is] not a mandatory question being administered by [U.S border] officer."[84]

36. CBSA officials testified that Bill C-45 "maintains the existing control framework associated with the prohibition of the cross-border movement of cannabis."[85] They noted that CBSA will be part of a multifaceted education campaign to inform the public that under Bill C-45 crossing the border while in possession of cannabis remains illegal. The campaign will include "signage at … ports of entry to inform people that it is illegal to take cannabis out of the country and into the United States."[86]

37. Mr. Larkin explained in his written brief that he is concerned that the "passage of Bill C-45 could have adverse ramifications for Canada's relationship with … the United States."[87] He was also concerned that the passage of Bill C-45 could "contribute to a public health problem in the United States by making it easier to smuggle marijuana edibles across the border."[88]

---

81 AEFA, *Evidence*, 25 April 2018 (Canada Border Services Agency)
82 AEFA, *Evidence*, 21 March 2018 (Global Affairs Canada), AEFA, Evidence, 25 April 2018 (Canada Border Services Agency).
83 AEFA, *Evidence*, 25 April 2018 (Canada Border Services Agency).
84 AEFA, *Evidence*, 25 April 2018 (Canada Border Services Agency).
85 AEFA, *Evidence*, 25 April 2018 (Canada Border Services Agency).
86 AEFA, *Evidence*, 25 April 2018 (Canada Border Services Agency).
87 Paul Larkin, written brief submitted to AEFA, 16 April 2018.
88 Paul Larkin, written brief submitted to AEFA, 16 April 2018.

OBSERVATIONS AND RECOMMENDATIONS

Having examined Bill C-45 insofar as it relates to Canada's international obligations:

38. Your Committee concurs with its witnesses, all of whom, including the Minister of Foreign Affairs, agreed that Bill C-45 contravenes the 1961 Single Convention, the 1971 Convention on Psychotropic Substances, and the 1988 Anti-Trafficking Convention and that the Government of Canada needs to address Canada's contravention of these three international drug control treaties.

    Your Committee notes that of the various remedial options available to the Government of Canada that were identified by witnesses and documented in this report, no single unambiguous recourse to Canada's violation of the three international drug control treaties emerged.

    Your Committee recommends that the Government of Canada take such action that mitigates Canada's violation of the three drug control treaties. The action to be taken should be communicated in a clear and transparent manner to Canadians, the Parliament of Canada and the international community.

39. Given the importance of Canada's relationship with the U.S., **your Committee recommends that the Government of Canada engage with the relevant U.S. federal authorities in order to develop a common understanding among Canadians and Americans of the changes in Canadian domestic policy, of the consequences of these changes, and of the different approaches undertaken by the two states regarding the legalization of cannabis.**

40. The UN *Convention on the Rights of the Child* includes in Article 2 the obligation of states to "take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment … ." Accordingly, **your Committee notes that the Government of Canada should examine Part 1, Division 1, Clause 8 of Bill C-45 by which Canadian youth are criminalized for behavior that is legal for adults.**

41. With respect to Canada's duties as outlined in the UN *Declaration on the Rights of Indigenous Peoples*, specifically Article 19 regarding the duty to consult, your Committee notes the evidence presented in the context of Bill C-45 and Canada's international obligations.

42. **Your Committee recommends that the Minister of Foreign Affairs report to the Standing Senate Committee on Foreign Affairs and International Trade the actions that the Government of Canada has undertaken regarding Canada's compliance with the international conventions impacted by Bill C-45.**

WITNESSES

Wednesday, March 21, 2018

Mark Gwozdecky, Assistant Deputy Minister, International Security and Political Affairs, Global Affairs Canada

Kevin Thompson, Director General, North America Strategy Bureau, Global Affairs Canada

Thursday, March 22, 2018

Steven Hoffman, Professor, Faculty of Health and Osgoode Hall Law School, York University

Mark A. R. Kleiman, Professor of Public Policy, Marron Institute of Urban Management, New York University

Wednesday, March 28, 2018

Line Beauchesne, Full Professor, Department of Criminology, University of Ottawa

Armand de Mestral, Professor, Faculty of Law, McGill University

Thursday, March 29, 2018

Bruno Gélinas-Faucher, PhD Candidate in International Law, Faculty of Law, University of Cambridge

Dwight Newman, Professor and Canada Research Chair, College of Law, University of Saskatchewan

Kathy Vandergrift, Chair, Canadian Coalition for the Rights of Children

Wednesday, April 18, 2018

Paul J. Larkin, Jr., Senior Legal Research Fellow, Meese Center for Legal and Judicial Studies, Institute for Constitutional Government

Steve Rolles, Senior Policy Analyst, Transform UK

Grant Wilson, President, Canadian Children's Rights Council

Thursday, April 19, 2018

Martin Jelsma, Director, Drugs & Democracy Programme, Transnational Institute

Gwendolyn Landolt, National Vice-President, REAL Women of Canada

John Walsh, Director for drug policy and the Andes, Washington Office on Latin America

Diane Watts, Researcher, REAL Women of Canada

Wednesday, April 25, 2018

Eric Costen, Director General, Cannabis Legalization and Regulation Secretariat, Health Canada

Jennifer Lutfallah, Director General, Enforcement and Intelligence Programs, Canada Border Services Agency

David Pellmann, Executive Director, Office of Medical Cannabis, Health Canada

Tuesday, May 1, 2018

The Honourable Chrystia Freeland, P.C., M.P., Minister of Foreign Affairs, Global Affairs Canada

Martin Benjamin, Acting Assistant Deputy Minister for the Americas, Global Affairs Canada

Mark Gwozdecky, Assistant Deputy Minister, International Security and Political Affairs, Global Affairs Canada

Alan Kessel, Assistant Deputy Minister, Legal Affairs and Legal Adviser, Global Affairs Canada

SENATE | SÉNAT
CANADA

sencanada.ca @SenCanada @Senat/SenateCA @SenCanada